

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MILDRED MILLER,)	
)	Case No. C05-1495-RSL-JPD
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	GRANTING PLAINTIFF'S MOTION TO
CENTER FOR DIAGNOSTIC IMAGING,)	EXCLUDE MILDRED MILLER'S
et al.,)	MEDICAL NEGLIGENCE
)	SETTLEMENT FROM ANY
Defendants.)	POTENTIAL MEDICARE REPAYMENT
)	OR LIEN

The present matter comes before the Court on plaintiff's "Motion to Exclude Mildred Miller's Medical Negligence Settlement from Any Potential Medicare Repayment or Lien," filed on January 18, 2007. Dkt. No. 39. Plaintiff's motion seeks an order determining that the parties proposed settlement of \$175,000.00 to plaintiff is not subject to a Medicare repayment or lien. On October 12, 2006, the undersigned Magistrate Judge served as a settlement conference judge in this matter and heard from the parties about their respective positions. The parties were able to reach a settlement, but part of the settlement related to the issue of compromising any potential Medicare liens, which necessitated the plaintiff's motion. On February 6, 2007, this motion was referred to undersigned Magistrate Judge by the Honorable

01 Robert S. Lasnik, Chief Judge. Dkt. No. 40. After careful consideration of the motion,
02 supporting materials, governing law and the balance of the record, I recommend the following:

03 1. This case arises out of a 19-month delay in diagnosis of plaintiff's colon cancer.
04 The parties settled the dispute for a total payment to the plaintiff for \$175,000. No party
05 believes that there is an appropriate Medicare lien on any of the settlement proceeds.
06 Nevertheless, plaintiff's counsel forwarded settlement information to Meridian Administrative
07 Services, which for many years had the legal responsibility to resolve potential Medicare liens.
08 Plaintiff's counsel was informed that this is presently handled by CNI-MFPRC. After sending
09 the material to CNI, counsel was informed that no file existed, nor would one be opened
10 without an initial determination by Medicare that a potential reimbursement situation existed.
11 Accordingly, the plaintiff filed the instant motion.

12 2. The evidence presented by the parties during and after the settlement
13 conference in this case demonstrates that regardless of whether plaintiff's colon cancer was
14 diagnosed in 2002 or 2004, plaintiff would have required similar, if not the same, tumor
15 resection surgery she received in May 2004. As a result, any expenses associated with the
16 diagnosis and surgery at Memorial Regional Hospital in Hollywood, Florida, could not be
17 included in any legal claim against the defendants in this case. This evidence also indicates that
18 plaintiff's colon cancer in October 2002 was noninvasive and had not spread to her lymph
19 nodes, making it a Stage II disease for which chemotherapy would not have been appropriate,
20 required or necessary. Chemotherapy is a standard treatment for Stage III colon cancer, which
21 was the state of plaintiff's cancer in 2004. As a result, Medicare's eventual payment for
22 plaintiff's chemotherapy expenses became a claimed element of damage.

23 3. Because plaintiff's medical expenses for chemotherapy would not have occurred
24 but for the delay in diagnosis, there exists no Medicare overpayment pursuant to 42 U.S.C. §
25 1395y.

26
REPORT AND RECOMMENDATION GRANTING
PLAINTIFF'S MOTION TO EXCLUDE MILDRED MILLER'S
MEDICAL NEGLIGENCE SETTLEMENT FROM ANY
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